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No. \_\_\_\_\_

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1984

WILLIE J. DUNN,

PETITIONER

V.

UNITED STATES OF AMERICA AND  
PHILIP J. SULLIVAN,

RESPONDENT

PETITION FOR WRIT OF CERTIORARI TO  
THE UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT

WILLIE J. DUNN  
PETITIONER  
PRO SE  
4028 JUANITA CIRCLE  
ROOSEVELT CITY, ALABAMA  
35020  
TELEPHONE: (205) 424-1776

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QUESTIONS PRESENTED FOR REVIEW

1. Whether the United States Court of Appeals for the Eleventh Circuit had Jurisdiction to hear this appeal pursuant to the Federal Judiciary Act of September 24, 1789 (1 Stat. 73) and conflicting<sup>1</sup> decisions of other courts of appeals?
2. Whether the District Court erred in Construing that the Petitioner's Motion of September 26, 1983, was one pursuant to Rule 59, Federal Rules of Civil Procedure?<sup>2</sup>
3. Whether the petitioner was unduly prejudiced by the defendants South Central Bell Telephone Company's<sup>3</sup> delving into his psychiatric records and making this information available to Respondents, United States of America and Philip J. Sullivan and thus making it an issue?
4. Whether the District Court Improperly Dismembered the Petitioner's Complaint when it granted Summary Judgment to South Central Bell Telephone Company?

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<sup>1</sup> See App. A. The Judgment of the Appeals Court.

<sup>2</sup> See App. B. The District Court's Order of October 31, 1983.

<sup>3</sup> South Central Bell Telephone Company as a party defendant was granted summary judgment by order of the District Court entered August 3, 1983 (R-III, 582; App. ) and affirmed September 7, 1983. (R-III, 662, App. D) The petitioner is respectfully requesting this Court

to review these orders.

5. Whether under this Court's holding in Jackson v. Metropolitan Edison Company, 419 U. S. 345, 42 L.Ed. 2d 477, 95 S.Ct. 449, the District Court properly granted summary judgment to South Central Bell Telephone Company under the doctrine of State action when the petitioner invoked the protection of the Constitution and other Federal Laws and Statutes?

6. Whether South Central Bell Telephone Company and agents of the Internal Revenue Service were privileged to damage the petitioner's personal property causing him to suffer injuries several times?

7. Whether this Petitioner has shown that he was injured by the acts of South Central Bell Telephone Company and agents of the Internal Revenue Service, that these acts are likely to continue in an indefinite way than the general population, and that the relief sought will cure or redress the injuries and damages to his personal property?

8. Whether a Procedure Rule May Be Used to Deny Justice when the Defendant South Central Bell Telephone Company and the Respondents, United States of America and Philip J. Sullivan were not prejudiced for violating Federal Procedure Rules?

9. Whether the petitioner was unconstitutionally subjected to a double standard and thus prejudiced?
10. Whether the Question of jurisdiction should be set aside and this case judged on its merits.

LIST OF ALL PARTIES

The names of all of the parties to this proceeding are:

South Central Bell Telephone Company, defendant,  
Birmingham, Alabama

Mr. Philip J. Sullivan, Respondent  
District Director of the Internal Revenue Service  
Birmingham, Alabama

Bell South,  
Holding company for South Central Bell Telephone  
Company

Judge Sam C. Pointer  
Federal District Judge for the Northern District  
of Alabama, Southern Division

Judge Hatchett,  
Eleventh Circuit Court of Appeals

.. Judge Anderson,

Eleventh Circuit Court of Appeals

.. Judge Clark,

Eleventh Circuit Court of Appeals

United States of America, Respondent

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IN THE  
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WILLIE JAMES DUNN,

PETITIONER,

UNITED STATES OF AMERICA AND

PHILIP J. SULLIVAN,

RESPONDENT.

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES  
COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

The petitioner, Willie James Dunn, respectfully prays that a writ of certiorari issue to review the Judgment of the United States Court of Appeals for the Eleventh Circuit entered on 3 July 1981.

OPINION BELOW

The Court of Appeals entered its order dismissing the Petitioner's appeal for lack of jurisdiction. A copy of the order is attached as Appendix A. Then the petitioner filed a motion for stay. The Court returned unfiled the petitioner's Motion for Stay of the Mandate

on July 16, 1984. A copy of the motion is attached as Appendix E.

### JURISDICTION

On 3 July 1984 the Court of Appeals entered Judgment dismissing the petitioner's appeal for lack of jurisdiction. (App. A) The jurisdiction of this Court is invoked under Title 28, United States Code, Section 1254 (1).

### CONSTITUTIONAL PROVISIONS INVOLVED

United States Constitution, Article III:

Sec. 1. "The judicial power of the United States, shall be vested in one supreme court and in such inferior courts as Congress may from time to time ordain and establish."

Sec. 2. (1) "The judicial power shall extend to all cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their authority; to controversies to which the United States shall be a party..."

United States Constitution, Amendment I;

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech.... or the right of the people to peaceably assemble, and to petition the government for a redress of grievances."

United States Constitution, Amendment iv:

"The right of people to be secure in their person, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated..."

United States Constitution, Amendment V:

"No person shall be...deprived of liberty...  
without due process of law..."

United States Constitution, Amendment VII:

"In suits at common law, where the value in  
controversy shall exceed twenty dollars, the  
right of trial by jury shall be preserved..."

United States Constitution, Amendment ix:

The enumeration in the Constitution of certain  
rights, shall not be construed to deny or dis-  
parage others retained by the people."

Federal Statutes

The Federal Judiciary Act of September 24, 1789 (1 Stat.  
73), vol. 1, U.S. Statutes At Large, Chapter 20, pp.  
73-93. (See App. F)

Title 28, United States Code, Section 1254(1):

"Cases in the courts of appeals may be reviewed  
by the Supreme Court by the following methods:

- (1) By writ of certiorari granted upon the  
petition of any party to any civil...  
case, before or after rendition of judg-  
ment or decree..."

Title 28, United States Code, Section 1291:

"The courts of appeals shall have jurisdiction  
of appeals from all final decisions of the dis-  
trict courts of the United States..."

Title 28, United States Code, Section 1331 (a):

"Federal question; amount in controversy...  
(a) The district courts shall have jurisdiction  
of all civil action wherein the matter in contro-  
versy exceeds the sum or value of \$10,000,  
exclusive of interest and costs, and arises under  
the Constitution, laws or treaties of the United  
States."

Title 28, United States Code, Section 1332 (c):

"For the purposes of this section...a corporation shall be deemed a citizen of any state by which it has been incorporated and of the state where it has its principal place business..."

Title 28 U.S.C., Section 2072:

"The Supreme Court shall have the power to prescribe by general rules, the forms of process, writs, pleadings, and motions, and the practice and procedure of the district courts and courts of appeals of the United States in civil actions..."

Such rules shall not abridge, enlarge or modify any substantive right and shall preserve the right of trial by jury as at common law and as declared by the Seventh Amendment to the Constitution."

Title 28, United States Code, Section 2201:

"Creation of remedy  
In a case of actual controversy within its jurisdiction...any court of the United States upon the filing of an appropriate pleading, may declare the rights and other relations of any interested party seeking such declaration, whether or not further relief is or could be sought..."

### Federal Rules of Appellate Procedure

Rule 1(a): These rules govern procedure in appeals from the United States district courts...in applications for writs or other relief which a court of appeals or judge thereof is competent to give.

(b): Rules Not to Affect Jurisdiction. These rules shall not be construed to extend or limit the jurisdiction of the courts of appeals as

established by law.

Rule 3(a): Filing the Notice of Appeal. An appeal permitted by law as of right from a district court to a court of appeals shall be taken by filing a notice of appeal with the clerk of the district court within the time allowed by Rule 4.

Rule 4(a)(4): If a timely motion under the Federal Rules of Civil Procedure is filed in the District Court by any party...under Rule 59..., the time for appeal for all parties shall run from the entry of the order denying...such motion. A notice of appeal filed before the disposition of (such motion) shall have no effect. A new notice of appeal must be filed within the prescribed time measured from the entry of the order disposing of the motion as provided above. No additional fees shall be required for such filing.

### STATEMENT OF THE CASE

On July 3, 1983, the Eleventh Circuit Court of Appeals dismissed the petitioner's appeal for lack of jurisdiction. The appellees, in their brief raised the issue that the appeals court lacked jurisdiction because the petitioner had failed to file a second Notice of Appeals as required by Rule 4(a)(4), of the Federal Rules of Appellate Procedure. (Appellee's br., p. 13) Prior to the dismissal, the Court had the parties to file briefs regarding the question of jurisdiction, citing this Court's holding in Griggs v. Provident Consumer Discount Co., 103 S.Ct. 400, 74 L.Ed.2d 225, 229 (1982), and its decision in Campbell v. Wainwright, Nos. 82-5990, 82-6068, slip opinion at 1971 (11th Cir. March 9, 1984). Pursuant to Section IV, subsection F, 3(b), of the Court's Internal Operating Procedures, the petitioner, on March 26, 1984, informed it of how he had been harassed and nearly forced off of I-20 on January 17, 1974 in the State of Georgia and again while travelling on I-20/59, on March 14, 1984, to Tuscaloosa, Alabama. The petitioner also informed the Court that an IRS agent called his office and told him what he had said in his bedroom. (See Letter to the Court, dated March 26, 1984) On July 10, 1984,

the petitioner Motioned for Stay. The Motion was returned unfiled. (App. E)

On July 6, 1982, the petitioner filed a Complaint, in the District Court, seeking a permanent injunction against agents of the Internal Revenue Service (IRS) and South Central Bell Telephone Company (SCB)<sup>4</sup> for violation of First and Fourth Amendment violation. The suit alleged that agents of the IRS, using vehicles owned by SCB, had engaged in the surveillance and harassment of the petitioner. (R-I, 1-16)<sup>6</sup>. Named as defendants were United States of America (U.S.A.), Philip J. Sullivan, and Wallace R. Bunn.<sup>5</sup> Jurisdiction was founded under 28, U.S.C., 1331 (a) and in accordance with Judge Groom's order.<sup>7</sup>

During the pendency of this case, SCB filed a Motion to Dismiss. (R-I, 22-23) The petitioner was

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SCB was not an appellee; therefore, it did not file an appeal brief. It had been granted summary judgment.

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Philip J. Sullivan is the District Director of the Birmingham Office, Internal Revenue Service. Wallace R. Bunn was the then president of South Central Bell Telephone Company.

6

"R" references four(4) volumes record.

7

Judge Grooms is a Federal District Court Judge for the Northern District of Alabama.

not served. He filed objections. (R-I, 38) Attorneys for U.S.A. and Philip J. Sullivan then filed Motion to Dismiss. (R-I, 40-4) The order of the District Court dismissed any monetary damages against the U.S.A. (R-I, 83) (App.F) The petitioner Motion to Amend (R-I, 48-63), setting out ten(10) counts against SCB, and sought One Million Six Hundred Fifty Thousand Dollars (\$1,650,000), with costs.

Answers were filed and petitioner filed his Reply. He filed objections and SCB filed response to requests for production showing that petitioner had given a statement. (R-II, 315-318) to two of its security people at Mr. Bunn's requests. (R-I, 56) IRS agents had harassed petitioner at his church during worship hour (R-I, 15 at "aa"; R-IV, 79-80); damaged his personal property (R-IV, 49, 52, 54, 56-63; R-III, 601-605, R-I, 187-196. See also petitioner's Exhibits Nos.: 8-10, 13-14, 21), and caused him injuries. (R-IV, 62, 66; R-I, 190 at n.2). Petitioner motioned for permanent injunction pursuant to 28 U.S.C., Sections 2201 and 2202. (R-I, 187) The Court allowed this motion as amended to the Complaint. (R-II, 266)

Petitioner gave his deposition. Attorneys for all defendants asked questions of he which invaded his privacy regarding treatment and other aspects of his

mental illness. He refused to answer. The Court order he to answer and he complied. (See Dunn's dep., pp. 30-34; 87-91) He filed a Motion to Bar Admission. (R-II, 461-462) The Court never acted on the motion. (R-III, 701-702)

Then SCB filed its Motion for Summary Judgment or In the Alternative, For a Mental Examination (R-II, 475-499), arguing that under this Court's holding in Jackson v. Metropolitan Edison Co., 419 U.S. 345, 42, L.Ed. 2d 477, 95 S.Ct. 449, and under the doctrine of state action, a public utility who acted unilaterally, did not implicate the United States. The motion was granted. (R-III-582; App. C) Petitioner Motion for Stay. (R-583-586) It was denied. The order was affirmed. (R-III, 662) Attorneys for the Government Motion for Summary Judgment. (R-III, 623-625) Petitioner was not served. During a conference, held in the chambers of the Court, petitioner informed the Court that he had not been served. The Court had he to answer to the motion extemporaneously. (R-III, 703-704) Prior to taking the deposition of J. L. Rosser, representing SCB, material documents were subpoenaed. SCB refused to obey the subpoena. The petitioner met with the attorney for SCB in an effort to mitigate the amount of damages. Petitioner offered to reduce the amount

of damages sought if SCB would have the harassing and perverted calls being made to his mother stopped. The calls stopped.

Philip Sullivan was granted partial summary judgment against all money damages under Butz v. Economou, 438 U.S. 478 (1978), pursuant to the doctrine of superior respondent.

Trial was held on September 15, 1984, before the Honorable Sam C. Pointer, Jr. Before trial began, two of the petitioner's witnesses, Mrs. Katie R. Lemons and Mrs. Shirley R. Ragland, both of whom lived in Cleveland, Ohio called the Court and informed it that they were witnesses, but could not come to Alabama to testify. The Court agreed to hear both testimonies via long distance telephone calls. The Court took the testimony of Mrs. Lemons, (R-IV, 28-32) but it did not take that of Mrs. Ragland. Petitioner testified to the facts. He omitted informing the Court that after the accident of April 8, 1984, an IRS agent walked up to him and said: "We got you that time! Didn't we?" Defendants questioned the petitioner about his mental illness. The findings of the Court was that the allegations of the petitioner were "...only the product of an ill mind." (R-IV, 116) In an effort to get the testimony of Mrs. Ragland on record, the petitioner

filed a post-trial motion. The District Court construed it to be one pursuant to Rule 59, Federal Rules of Civil Procedure: a motion for a new trial.

### REASONS FOR GRANTING THE WRIT

The Eleventh Circuit Court of Appeals had jurisdiction to hear this case, as Congress exercised its authority to create inferior federal courts in The Judiciary Act of September 24, 1789 (1 Stat. 73) Cha. 20, Sec. 21 & 22. The principal jurisdiction conferred upon this court was appellate jurisdiction.

Section 11 (c) states that:

"And the circuit courts shall also have appellate jurisdiction from the district courts under the regulations and restrictions herein after provided. Smith v. Jackson, Paine's C.C. Ry 453."

Section 11 (b), para. 12, states:

"Where the jurisdiction of the federal courts has once attached, no subsequent change in the relation or condition of the parties in the progress of the cause, will oust jurisdiction.

The United States v. Meyers, 2 Brocken. C.C.R. 516."

Jurisdiction was conferred upon the Court by an Act of Congress. See Kline v. Burke Construction Company, 260, 226, 234, 43 S.Ct. 79, 67 L.Ed. 226, 24 ALR 1077 (1922).

Article III, Section 2, of the Federal Constitution provides that:

"The judicial power should extend to all cases, in Law and Equity, arising under the Constitution, Laws of the United States, and Treaties made, or which shall be made, under their authority..."

This Court in Martin v. Hunter's Lessee, 1 (Wheat.) 304, 4 L.Ed. 9/ (1916) held that under the terms of the Constitution, all judicial power cognizable under Article III had to be distributed by Congress. That the judicial power granted by Article III had to be exercised by some federal court, or the rights created by the Constitution might go unprotected. Before that, in The Moses Taylor, 4 Wall. 411, 429, 18 L.Ed. 397 (1867), this Court held that The Federal Judiciary Act of 1789 (1 Stat. 73), in its distribution to the several federal courts recognizes and is formed upon the theory that in all cases to which the judicial power of the United States extends, Congress may rightfully vest exclusive jurisdiction in the federal courts. See Marbury v. Madison, 1 Cranch 137, 2 L.Ed. 60 (1803); Ex parte McCardle, 7 Wallace 506, 19 L.Ed. 264 (1869); Osborn v. Bank of the United States, 22 U.S. 9 (Wheat.) 738 (1824); Massachusetts v. Mellon, 262 U.S. 447, 43 S. Ct. 547, 67 L.Ed. 1078 (1923); Ex parte Albert Levitt 302 U.S. 633, 58 S.Ct. 1, 82 L.Ed. 493 (1937). In

Osborn v. Bank of the United States, 22U.S. supra, Chief Justice Marshall ruled that the "arising under" clause in Article III, Sec. 2, para. 1, permits a grant of jurisdiction over any suit potentially invoking an issue of federal law.

Article III provides responsibility to provide judicial forum for the redress of serious constitutional violations. The complaint alleged, inter alia, that agents of the IRS harassed the petitioner in the sanctuary of his church during worship hour; that these agents, used vehicles owned by SCB, surveilled and harassed he while attending a professional meeting at The University of Alabama; surveilled and harassed he travelling on the intra/interstate highways; damaged his personal property and caused he to suffer personal injuries; invaded his privacy via visual and electronic surveillance; and violated his due process rights as his privacy penalized by an inequality, and that equal protection was also violated because an inequality was invidious due to its impact on constitutionally protected privacy rights. These agents were not privileged to commit these acts against the petitioner. See Warden v. Hayden, 387 U.S. 294, 87 S.Ct. 1642, 18 L.Ed. 2d 782 (1967); Katz v. United States, 389 U.S.

347, 19 L.Ed. 2d 576, 88 S.Ct. 507 (1967); Baker v. Norman, 651 F.2d 1107 (5th Cir., 1981). See also the petitioner's letter to the Court of Appeals dated March 24, 1984.

Rule 4(a)(4) is not an Act of Congress, it is not a law, and it therefore cannot be used to deny justice, since the dismissal conflicts with other decision of courts of appeals. See, e.g., State v. Valdorta-Lowndes County Hospital Authority, 668 F.2d 1177, 1178 n.2 (CA11 1982). The purpose to which this Rule was used appears to conflict with Rule 1(b).

Rule 1(b) of the Rules of Appellate Procedure states:

(b): "Rules Not to Affect Jurisdiction. These rules shall not be construed to extend or limit the jurisdiction of the courts of appeals as established by-law.

Every losing party is entitled to an appeal as of right.

Rule 3(a) of the Federal Rules of Appellate Procedure

states:

"Appeal As of Right - How Taken

(a) Filing the Notice of Appeal. An appeal permitted by law as of right from a district court to a court of appeals shall be taken by filing a notice of appeal with the clerk of that district court with the time allowed by Rule 4..."

Under Section 3.10 of the Standards Relating to Appellate Court, every appellate litigant is entitled to equal consideration at the initial appellant level. See id., Sec. 3.30.

Since the petitioner invoked the protection of the Constitution, federal laws and statutes, which protected guaranteed rights and liberties, The Courts of Appeals had jurisdiction. Therefore, Griggs v. Provident Consumer Discount Co., 103 S.Ct. 400, supra, and Campbell v. Wainwright, Nos. 82-5990, 82-6068, supra, are not applicable to this case. Thus, the dismissal is unconstitutional because Congress in The Judiciary Act of September 24, 1789, under Sections 11 (c)(b), and 22 conferred jurisdiction upon the courts of appeals. And under provisions of the Declaration of Rights, every person shall have a legal remedy for any injury by due course of law. (See F.S.A. Constitution Declaration of Rights, Section 4) Statutory provisions under 28 U.S.C., Section 2072 provides that "Such rules shall not abridge, enlarge or modify any substantive right and shall preserve the right of trial by jury as at common law and as declared by the Seventh Amendment."

Petitioner demanded trial by jury (R-I, 16) and never withdrew that demand. Rule 38(a) of the Federal Rules of Civil Procedure states that:

Rule 38(a): "The right of trial by jury as declared by the Seventh Amendment to the Constitution or as given by a statute of the United States shall be preserved to the parties inviolate."

The Petitioner's amended Complaint (R-I, 187-198, 216) sought relief pursuant to 28 U.S.C., Sections 2201 and 2202. Rule 57 states:

Rule 57: "The procedure for obtaining a declaratory judgment pursuant to Title 28 U.S.C., Section 2201, shall be in accordance with these rules, and the right to trial by jury may be demanded under the circumstances and in the manner provided in Rules 38 and 39.

The Federal Judiciary Act of September 24, 1789, specifically provides that "...the trial of issues in fact, in the district courts, in all cases except civil causes of admiralty and maritime jurisdiction, shall be by jury." (Cha. 20, Sec. 9(d). At the stage of these proceedings when SCB motioned for summary judgment, (R-11, 475-499) there were material facts in dispute. Therefore, SCB was improperly granted summary judgment, thus prejudicing the petitioner. Yet, he was denied his constitutional right of having an impartial jury of his peers to hear material facts in dispute.

The District Court erred in interpreting the petitioner's motion of September 26, 1983 to have been one for a new trial pursuant to Rule 59 of the Federal Rules of Civil Procedure.

Rule 59 of the Federal Rules of Civil Procedure states that: "On a motion for a new trial in an action tried without a jury, the court may open judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new findings and conclusions, and direct the entry of a new judgment."

The Judiciary Act of September 24, 1789, Sec. 17 (1 Stat. 73) provides "That all said courts of the said courts of the United States shall have power to grant new trials, in cases where there has been a trial by jury for reasons for which new trials have usually been granted in the courts of law..."

When post-trial motions are filed, Federal District Courts customarily construe them to be motions for new trials under Rule 59. (See the dissenting opinion of Justice Marshall in Griggs v. Provident Consumer Discount Co., 103 S.Ct. 400, supra.)

The statutory provision of Sec. 20 of the Judiciary Act of September 24, 1789 provides that "a new trial may be made on the basis of which new trials are granted.

Mrs. Shirley Ragland was not called by the Courts, therefore, it became the duty of the petitioner to get her testimony on record. A reading of his motion shows that it was not a motion for a new trial. Since it was not a motion for a new trial, the finality of the Judgment was not affected. Martin v. Hess, 176 F.2d 834, 835, (6th Cir., 1949); United States v. Nixon, 418 U.S. 683, 94 S.Ct. 3090, 41 L.Ed. 2d 1 (1974).

South Central Bell Telephone Company prejudiced the petitioner when it delved into his background and somehow reviewed his psychiatric treatments and/or talked with the petitioner's psychiatrist. It then made this information available to attorneys for the Government. Together, they make this an issue. (See R-II, 475-499; R-III, 500-501, 540-543; R-IV, 105-108) The issue of the petitioner's mental illness was so prejudicial that the District Court stated in its findings of fact that:

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"It is clear that the type of evidence presented and the perceptions as Mr. Dunn calls them about what has been going on with him and attributing that to the Internal Revenue Service is totally without foundation and must be viewed as only the product of an ill mind." (R-IV-116)

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The petitioner's exhibits have been returned to he by the Clerk's Office, Federal District Court, Birmingham, Alabama.

There was nothing in the record to show that the petitioner's behavior had been anything but exemplary. Petitioner's mental illness of 1970 was not an issue. The synchronization of the infringement on liberties and the deprivation of constitutionally protected rights by SCB and the IRS and the unfortunate experience of petitioner were in no way related. Therefore, it becomes a priori that the only reason his mental illness was made an issue was to prejudice the case. And it did. The treatments petitioner received by his psychiatrists and the information provided thereon were privileged. Such information is akin to a client who provides his attorney with information in preparation of his case. It becomes the work product of the attorney, and is thus privileged. See Hickman v. Taylor, 329 U.S. 495, 67 S.Ct. 385, 91 L.Ed. 451 (1947). In Tweith v. Dubuth, M & I. R.Ry. Co., 66 F. Supp.

427, 429 the Court stated:

"A licensed physician or surgeon shall not, without the consent of the patient, be allowed to disclose any information or any opinion based thereon which he acquired in attending the patient in a professional capacity and which was necessary to enable him to act that capacity."

A litigant who seeks relief in the District Court, consequent upon violation of constitutional rights, should not have to give up his privacy to do so.

Under the doctrine of Eric Railroad Co. v. Tompkins 304 U.S. 64, 58 S.Ct. 817, 82 L.Ed. 1188 (1938), the petitioner attempted to show that, except in matters governed by the Federal Constitution or by Acts of Congress, the substantive law to be applied in any case was the law of the state. Hence, the information related to his psychiatric treatments was privileged under Title 34-26-2 of the Code of Alabama. (App. 12) The Judiciary Act of September 24, 1789, Cha. 20, Sec. 34 provides:

"That the laws of the several states, except where the constitution, treaties or statutes of the United States shall otherwise require or provide, shall be regarded as rules of decision in trials at common law in the courts of the United States in cases where they apply."

It then states:

"In construing the statutes of a state, infinite mischief would ensue, should the federal courts observe a different rule from that which has long been established in the State. McKeen v. Delancy's Lessee, 5 Cranch 22; 2 Cond. Rep. 179.

The petitioner's mental illness was so prejudicial that it became the sine quo non upon which the District Court based its findings of fact. No Federal law was applied to these facts. Therefore, the Court erred. Such error prejudiced the petitioner. Rule 52(a) of the Federal Rules of Civil Procedure states:

Rule 52(a): "In all actions tried upon the facts without a jury or with an advisory jury, the court shall find the facts specially and state separately its conclusions of law thereon, and judgment shall be entered pursuant to Rule 58..."

Rule 56(c) of these Rules provide that

"...if the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law."

Since the District Court granted judgment in favor of the defendants, United States and Philip J. Sullivan, pursuant to Rule 41, of the Federal Rules of Civil Procedure, it erred because the record will show that no Federal law was subjected to the facts and/or vice-versa. Rule 41(b) of these Rules states that:

"....After the plaintiff, in an action tried by the court without a jury, without waiving his right to offer evidence in the event the motion is not granted, may move for a dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief..."

Question raised: Did the facts pleaded, testimony adduced and evidence tendered thereon, show that the petitioner was not entitled to relief, as a right.

Also, the petitioner was further prejudiced by double standards the District Court employed when it required of he to answer to a motion which he had not been served and failed to have SCB to serve upon he,

its Motion to Dismiss. (R-I, 22-23) Rule 5(a) of the Federal Rules of Civil Procedure states that:

Rule 5(a): "Excepts as otherwise provided in these rules, every order required by it terms to be served, every pleading subsequent to the original complaint unless the court otherwise orders because of numerous defendants, every paper relating to discovery required to be served upon a party unless the court otherwise orders, every motion other than one which may be heard ex parte...and similar paper shall be served upon each of the parties."

The petitioner was further prejudiced because SCB refused to obey the subpoena served upon it by the petitioner, and produced requested documents. The Federal Judiciary Act of 1789, Sec. 15 states:

Sec. 15. "And be it further enacted, That all the said courts of the United States, shall have power in the trial of actions at law, on motion and due notice thereof being given, to require the parties to produce books or writings in their possession or power, which contain evidence pertinent to the issue, in cases and under circumstances where they might be compelled to produce the same by the ordinary rules of proceeding in chancery; and if a plaintiff shall fail to comply with such order, to produce books or writings, it shall be lawful for the courts respectively, on motion, to give the like judgment for the defendant as in cases of nonsuit; and if a defendant shall fail to comply with such order, to produce books or writings, it shall be lawful for the courts respectively on motion as aforesaid, to give judgment against him or her by default.

Rule 45(a) of the Federal Rules of Civil Procedure states:

Rule 45(a): "The clerk shall issue a subpoena, ...for the production of documentary evidence, signed and sealed but otherwise in blank, to a party requesting it, who shall find it in before service."

Question raised: With documentary evidence unavailable to the Court by virtue of SCB's refusal to honor the petitioner's subpoena, was summary judgment properly granted to SCB?

Since the law was inadequate to give the petitioner relief, the provisions under Rule 57 accorded he the right of a jury to hear those material facts in dispute. 28 U.S.C., Sections 2201 and 2202 should have provided the petitioner remedy. (R-I, 187, 198, R-II, 266) Because material facts were in dispute at the times in the proceedings when U.S.A., Philip J. Sullivan, and SCB were granted partial and complete summary judgment, respectively, there were improperly granted.

Too, since SCB was granted summary judgment, the Court in affect agreed with it to the extent that under this Court's holding in Jackson v. Metropolitan Edison C., 419 U.S. 345, supra, a litigant who seeks

remedy for the infringement of liberties and deprivation of constitutional rights, must first seek relief in a state court. Even though he invoked the protection of the Constitution, and federal laws and statutes. This Court cannot support the District Court's position under its holding in Nebbia v. New York, 291 U.S. 502, 534, 54 S.Ct. 503, 78 L.Ed. 940 (1934); Marbury v. Madison, 1 Cranch 137, 2 L.Ed. 60 (1803). The state action doctrine cannot defect the petitioner's case because it is not a state entity (e.g., power associated with a state government such as imminent domain) and it is not a monopoly in the State of Alabama. Therefore, Jackson v. Metropolitan Edison Co. supra is inapplicable to this case.

SCB and the IRS were not privileged to damage the petitioner's personal property and inflict personal injuries upon he. Pierson v. Ray, 386 U.S. 547, 18 L. Ed. 2d 288, 87 S.Ct. 1213.

There is evidence that the threat of harm will continue. (See the petitioner letter to the Court of Appeals). And that the petitioner has suffered actual injuries, traceable to South Central Bell and to agents of the IRS. (See, Linda R.S. v. Richard D., 410 U.S. 614, 617 (1973); Duke Power Co. v. Carolina

Envtl. Study Group, 438 U.S. 59, 72 (1978); Vil of Arl. Height v. Metropolitan Hous. Dev. Corp., 429 U.S. 252, 261 (1977); and Simon v. Eastern Ky. Welfare Rights Org., 426 U.S. 26, 38 (1976).

The District Court allowed Respondents United States of America, Philip J. Sullivan, and South Central Bell complete discovery. But the petitioner was denied relevant information, he sought through discovery. Rule 26 (c)(4) states:

Rule 26(c) (4): "Upon motion by a party or by the person from whom discovery is sought, and for good cause shown, the court in which the action is pending or alternatively, on matters relating to a deposition, the court in the district where the deposition is to be taken may make any order which justice requires to protect a party or person from...embarrassment, annoyance ...including the following: (4) that certain matters not be inquired into, or that the scope of the discovery be limited to certain matters..."

Rule 37(a) of these Rules state:

Rule 37(a): "A party, upon reasonable notice to other parties and all parties affected thereby, may apply for an order compelling discovery..."

Petitioner motioned the Court for a protective order on June 22, 1983. (R-III, 461-462) The Court never acted on it.

Rule 7(b)(1) states that:

Rule 7(b)(1): "An application to the court for an order shall be by motion which, unless made during a hearing or trial, shall be made in writing, shall state with particularity the grounds therefore, and shall set forth the relief or order sought."

Respondents, United States of America and Philip J. Sullivan filed the same motion on August 26, 1983, and it was immediately acted upon (R-III, 626-628) to the extent that the District Courts reviewed the information in-camera. (R-III, 626-628, R-IV, 4-5) The Court never acted on the petitioner's motion. (R-III, 701-702) This violated his procedural due process right and had a prejudicial affect upon the outcome of the case.

As has been shown, South Central Bell Telephone Company, United States of America, and Philip J. Sullivan violated procedure rules which affected the outcome of this case. None of these litigants were prejudiced for violating these rules. In fact, it can be shown that in doing so, they enhanced their positions, It would offense a sense of justice if the petitioner has to abide by the procedure rules, while his opponents did not.

These litigants' actions violated fundamental, constitutional guarantees; therefore, the name

procedural standards applied to them. Hampton v. U.S.,  
96 S.Ct. 1646 Fitzgerald v. Hampton, 467 F. 2d 755,  
152 U.S. App. D.C.1.

Stay granted 93 S.Ct. 549, 409 U.S. 1055, 34 L.Ed.  
2d 509 United States v. American Honda Motor Co.,  
273 F. Supp. 810.

Given the above, this Court should consider setting  
the question of jurisdiction aside and judging this  
case on its merits. It would not be beyond this Court's  
judicial power of review, since the purpose of Rule 4  
(a)(4) is not to deny justice, its use is contrary to  
the language and purposes of the 1979 Amendments to  
the Federal Rules of Appellate Procedure, and other  
decision of courts of appeals. (See United States v.  
Valdosta-Lowndes County Hospital Authority, 668 F.2d  
1177, 1178 n.2 (CA11, 1982); Beam v. Youens, 664 F.2d  
410(CAS 1980), Duke Power Co. v. Carolina Environ.  
Study, 438 U.S. 59, 57 L.Ed. 2d 595, 98 S.Ct. 2620  
(1978).

This Court has held that a filing time require-  
ment established by the court rule, as distinguished  
from a requirement promulgated by statute, is not  
inherently or necessarily jurisdictional. See Schacht  
v. United States, 398 U.S. 58, 64, 26 L.Ed. 2d 44, 90  
S.Ct. 1555, Taglianetti v. United States, 394 U.S.

316, n.1, 22 L.Ed. 2d 302, 304, 89 S.Ct. 1099 (1969);

Heflin v. United States, 358 U.S. 415, 418 n.7, 3

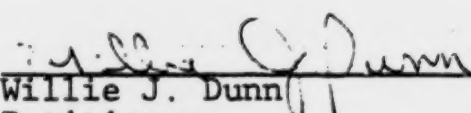
L.Ed. 2d 407, 79 S.Ct. 451 (1959).

If review is unaviable, the petitioner will be irreparably injured. See Ct. Clark v. Williard, 294 U.S. 211, 55 S.Ct. 356, 79 L.Ed. 865, 98 ALR 347; Gumbel v. Pitkin, 113 U.S. 545, 5 S.Ct. 616, 28 L.Ed. 404; Barnard v. Gibson, 7 How. 650, 657, 12 L.Ed. 857.

The disposition of this case as to law and in the best interest of justice requires that the dismissal be vacated and the mandate recalled.

CONCLUSION

The petitioner has alleged such a personal stake in the outcome of this controversy as to warrant invocation of federal-court jurisdiction and to justify exercise of this Court's remedy. Vil. of Arlington Hts. v. Metro. Housing Dev., 97 S.Ct. 555, 261; United States v. SCRAP, 412 U.S. 669, 688, 93 S.Ct. 2405, 2416, 37 L.Ed. 2d 254 (1973); Warth v. Seldin, 422 U.S. 490, 498-499, 95 S.Ct. 2197, 2205, 45 L.Ed.2d 343, 354 (1975).

  
\_\_\_\_\_  
Willie J. Dunn  
Petitioner

Pro Se  
4028 Juanita Circle  
Roosevelt City, Alabama 35020  
Telephone: (205) 424-1776

IN THE  
SUPREME COURT OF THE UNITED STATES  
OCTOBER TERM, 1984

NO. \_\_\_\_\_

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WILLIE JAMES DUNN,

PETITIONER,

V.

UNITED STATES OF AMERICA AND

PHILIP J. SULLIVAN,

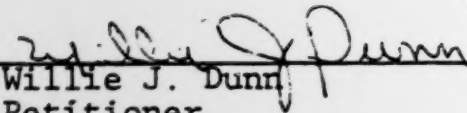
RESPONDENT.

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Certification of Service

This is to certify that three(3) copies of this petition has been served upon Attorney Stanley S. Shaw, Jr., Tax Division, Department of Justice, Washington, D.C. 20530 and a single copy upon Mr. Orrin K. Ames, Attorney for South Central Bell Telephone Company, 3196 Highway 280-S, Room 304N, Birmingham, Alabama 35243, by depositing the same in a U.S. Mail Box with proper postage and properly addressed on 30 September 1984.

  
\_\_\_\_\_  
Willie J. Dunn  
Petitioner

Pro Se

4028 Juanita Circle  
Roosevelt City, Alabama 35020

Telephone: (205) 424-1776

APPENDIX

- A - The Judgment of the United States Court of Appeals for the Eleventh Circuit, dismissing appeal for lack of jurisdiction.
- B - The Order of the District Court of October 31, 1983.
- C - The Order of the District Court granting South Central Bell Telephone Company summary judgment.
- D - The Order of the District Court, affirming its order, and granting partial summary judgment for Philip J. Sullivan.
- E - Copy of the Petitioner's Motion for Stay, returned unfiled.
- G - Title 34-26-2, Code of Alabama, 1975
- F - Order of the District Court granting dismissal of any money damages against the United States.
- H - Order denying discovery.
- I - Order stating that the petitioner would have jury trial.
- J - Order upon trial, dismissing the petitioner's case with prejudice.

IN THE UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT

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No. 83-7582

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WILLIE J. DUNN,

Plaintiff-Appellant,

versus

UNITED STATES OF AMERICA;  
PHILLIP J. SULLIVAN,

Defendants-Appellees

- - - - -  
On Appeal from the United States District Court  
for the Northern District of Alabama  
- - - - -

Before HATCHETT, ANDERSON AND CLARK, Circuit Judges.

B Y T H E C O U R T:

This appeal is dismissed for lack of jurisdiction.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ALABAMA  
Southern Division

WILLIE J. DUNN,

Plaintiff,

-vs.-

UNITED STATES OF AMERICA,  
et al.,

Defendants.

NO. CV 82-P-1488-S

ORDER

Plaintiff's "Motion to Extend Time to Keep Final Judgment Open to Receive Affidavits and Documents" is treated by this court as a timely motion for new trial pursuant to F.R.Civ.P. 59, and it is hereby ORDERED that the motion be DENIED. Accordingly, plaintiff's two subsequent motions requesting that the court receive certain affidavits and documents into the record are hereby DENIED.

This the 31st day of October, 1983.

United States District  
Judge

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ALABAMA  
Southern Division

WILLIE J. DUNN,

Plaintiff;

-vs.-

UNITED STATES OF AMERICA, et al.,

Defendants.

No. CV 82-P-1488-S

ORDER

This cause is before the court upon motion for summary judgment or in the alternative for a mental examination, filed by defendant South Central Bell Telephone Company in the above-styled case. Upon consideration of the motion and accompanying materials,<sup>1</sup> and based upon certain undisputed material facts, it is hereby ORDERED that the motion be GRANTED to the extent that summary judgment be granted in favor of the defendant South Central Bell Telephone Company.

This the 3rd day of August 1983.

\_\_\_\_\_  
United States District Judge

\_\_\_\_\_  
1. Plaintiff's "Motion to deny defendant, South Central Bell's motion for summary judgment or in the

alternative for a mental examination," filed July 8, 1983, and plaintiff's "Addendum to the plaintiff's motion to deny summary judgment," filed July 21, 1983, are deemed to be briefs in opposition to South Central Bell's motion.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ALABAMA  
Southern Division

WILLIE J. DUNN,

Plaintiff;

-vs.-

UNITED STATES OF AMERICA, et al.,

Defendants.

)  
)  
)  
) No. CV 82-P-1488-S  
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ORDER

At a conference held September 6, 1983, in the above-styled cause, this court considered all pending motions. Based upon the motions, documents submitted in support of the motions, oral arguments, and certain undisputed facts, it is hereby ORDERED:

- (1) That plaintiff's motion for reconsideration of this court's August 3, 1983, grant of summary judgment in favor of defendant South Central Bell be DENIED. <sup>1</sup>
- (2) That plaintiff's motion to stay, pending appeal, this court's order granting summary judgment in favor of defendant South Central Bell be considered MOOT since no final order has yet been entered in this cause.

- (3) That plaintiff's motion for summary judgment be GRANTED IN PART, dismissing all claims for damages asserted against Phillip J. Sullivan, but preserving Phillip J. Sullivan as a defendant for purposes of any injunctive relief that<sup>2</sup> may be later ordered by this court.

This the 7th day of September, 1983.

United States District Judge

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1

Plaintiff has not produced, and admits that he does not possess, any evidence of a conspiracy between South Central Bell and the Internal Revenue Service. Absent any demonstration of such conspiracy, this court must reaffirm its decision that any acts allegedly performed by South Central Bell do not constitute state action and that therefore South Central Bell was entitled to have summary judgment entered in its favor.

2

Plaintiff concedes that he has no evidence of any individual misconduct committed by Mr. Sullivan but seeks only to hold Mr. Sullivan liable in his official capacity for the purported actions of certain IRS agents directly or indirectly

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under his supervision. Mr. Sullivan unequivocally asserts that he has no knowledge of the acts of harassment plaintiff describes. Under the Supreme Court's decision in Butz v. Economou, 438 U.S. 478 (1978), federal executive officials may be held liable in a Bivens-type action for discharging their duties "in a way that is known to them to violate the United States Constitution or in a manner that they should know transgresses a clearly established constitutional rule." Id. at 507. Absent a showing of such culpability, federal executive officials are entitled to immunity. Considering the Supreme Court's mandate that a federal executive official may be held personally liable in a Bivens-type action only when he acted with knowledge of the unconstitutionality of his acts, Mr. Sullivan certainly cannot be held liable on a theory of respondeat superior for actions that he neither knew of or consented to. Accordingly, under the Butz doctrine of limited immunity, Mr. Sullivan is entitled to summary judgment.

IN THE UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT

WILLIE J. DUNN,	)	
	)	
Plaintiff-Appellant,	)	
	)	
vs.	)	No. 83-7582
	)	
UNITED STATES OF AMERICA	)	
and PHILIP J. SULLIVAN,	)	
	)	
Defendants-Appellees.	)	

MOTION FOR STAY OF MANDATE PENDING APPLICATION  
TO THE SUPREME COURT FOR WRIT OF CERTIORARI

The appellant, in the above-entitled cause, moves this Court for stay of the mandate filed on July 3, 1984, dismissing this cause for lack of jurisdiction, pursuant to Rule 41 of the Federal Rules of Appellate Procure, 28 U.S.C.A., Section 1252, and 28 U.S.C.A., Section 1254.

In support thereof, the appellant shows unto this Court that:

1. Dismissing his appeal will result in irreparable damages; deprivation of constitutional rights; and would not be in the best interest of justice, as Rule 4(a)4 is in conflict with provisions of

the First, Fourth, and Fifth Amendments, and therefore violates both the intent and spirit of the Rules of Appellate Procedure.

2. The intent of Rule 4(a)4 is not to deny the appellant justice as it is not an act of Congress; therefore, the laws of the Constitution, as scripted in the First, Fourth, and Fifth Amendments are paramount. The Court then construed this Rule as though it was the law, and thus denied fundamental principles of this society: abridgement of substantive rights, to wit: the right to worship, free of the harassment by IRS agents; the right of the appellant to remedy, consequent upon the violation of the First, Fourth, and Fifth Amendments; the right not to have to suffer injury to his person nor to his personal property; the right to attend professional meeting and to associate with colleagues free of the

surveillance by agents of the IRS using vehicles of South Central Bell Telephone Company; and the right to be secure in his home, effects, and papers against unreasonable electronic searches.

3. Thus, if Rule 4(a)4 is repugant to the Constitution, it cannot bind this Court and thereby oblige it to give its effects. But that is precisely what this Court has done. The Rule, though it is not the law, must operate as if it were the law, particularly in view of the proviso found in the Act of June 19, 1934: the court shall not "abridge, enlarge, nor modify substantive rights," in the guise of regulating procedure.
4. To dismiss the appellant's cause for the violation of a procedure rule will have a "chilling effect" upon the appellant; its prescription is not within the provisions of the Declaration of Rights,

Section 4; and that if the Rule is in conflict with the Constitution, the Supreme Court should review this case via-via its charge to interpret the Constitution.

WHEREFORE, it is prayed that this Court will issue stay, pending application to the Supreme Court for writ of certiorari.

Signed:

Willie J. Dunn, pro se  
4028 Juanita Circle  
Roosevelt Circle,  
Alabama 35020  
(205) 424-1776

CERTIFICATE OF SERVICE

This is to certify that three(3) copies of the appellant's Motion have been served upon Mr. Gleen L. Archer, Jr., this 10th day of July, 1984, by mailing the same in a postage paid envelope addressed to him at the Department of Justice, Tax Division, Washington, D.C. 20530.

Signed:

Willie J. Dunn, pro se

PROFESSIONS AND BUSINESSES

not attempt to diagnose, prescribe for, treat or advise a client with reference to problems or complaints falling outside the boundaries of psychological practice.

- (c) Nothing in this definition shall be construed as preventing qualified school counselors, vocational guidance counselors, vocational rehabilitation counselors speech and hearing therapists, speech pathologists and audiologists, reading therapists or teachers of exceptional children from rendering to the public for remuneration services for which they are qualified by training and experience involving the techniques of interviewing, administering and interpreting tests of mental abilities, achievement, interests and aptitudes for such purposes as evaluation or for educational or vocational guidance, selection or placement (Acts 1963, No. 535, p. 1147, § 2.)

§ 35-26-2. Confidential relations and communications between licensed psychologist and client.

For the purpose of this chapter, the confidential relations and communications between licensed psychologist and client are placed upon the same basis as those provided by law between attorney and client, and nothing in this chapter shall be construed to require any such privileged communication to be disclosed. (Act 1963, No. 535, p. 1147, § 14.)

Collateral references.-Disclosure of name, identity, address, occupation, or business of client as violation of attorney-client privilege. 1  
ALR3d 1047.

§ 34-26-3. Code of ethics.

The board of examiners shall adopt the code of ethics of the America Psychological Association to govern appropriate practices or behavior a referred to in section 34-26-46 and section 34-26-37 and shall file such code wit the secretary of state within 30 days prior to effective date of such code. (Act 1963, No. 535, p. 1147, § 15.)

## Article 2.

### Board of Examiners.

§ 34-26-20. Creation.

There is hereby created a board to be known

as the Alabama board of examiners in psychology composed of five members, appointed by the governor of this state within 60 days after October 1, 1963, in the manner and for the term of office as hereinafter provided. Said board shall perform such duties and have such powers as this chapter prescribes and confers upon it. (Acts 1963, No. 53 p. 1147, § 1.)

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ALABAMA  
Southern Division

WILLIE J. DUNN,	)	
	)	
Plaintiff,	)	
	)	
-vs.-	)	NO. CV 82-P-1488-S
	)	
UNITED STATES OF AMERICA,	)	
	)	
PHILLIP J. SULLIVAN AND	)	
	)	
WALLACE R. BUNN,	)	
	)	
Defendants.)	)	

ORDER

Upon consideration of the motion for partial dismissal by defendant United States of America, heard at the regularly scheduled motion docket on September 27, 1982, it is hereby ORDERED that the motion be GRANTED and that portion of the cause against defendant United States of America that seeks monetary damages be dismissed.

This the 28th day of September, 1982.

United States District Judge

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ALABAMA  
Southern Division

WILLIE J. DUNN,

Plaintiff,

-vs.-

UNITED STATES OF AMERICA,  
PHILLIP J. SULLIVAN, and SOUTH  
CENTRAL BELL TELEPHONE COMPANY,

Defendants.

)  
)  
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)  
) NO. CV 82-P-1488-S  
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ORDER

This cause arises upon consideration of plaintiff's motions to compel answers to interrogatories and for production of records, heard at the regularly scheduled motion docket on October 22, 1982. It is hereby ORDERED that plaintiff's motion to compel answers to interrogatories be DENIED as to defendant Phillip Sullivan, such defendant not having been served with the interrogatories in question. It is ORDERED that plaintiff's motion to compel answers to interrogatories be DENIED as to defendant South Central Bell, such defendant not having been served with the complaint in this case.

Plaintiff's "Motion for Production of Records, Reports, and All Statements and Memoranda" is premature, there having been no request for production upon defendants pursuant to Rule 34(a), FRCP. It is hereby ORDERED that plaintiff's motion for production is MOOT and will be treated as a request for production.

This the 25th day of October, 1982.

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United States District Judge

Defendant.

No. CV 82-P-1488-S

A pretrial conference was held in the above-styled cause on March 28, 1983, as a result of which the court hereby ORDERS

- (1) that the parties be ready for trial on or after June 15, 1983, with trial probably to be set for the last week of June, 1983;
- (2) that Exhibit A, attached hereto, be adopted as an exhibit to this order;
- (3) that to the extent this cause includes non-jury issues, the court expects to hear evidence as the jury hears it and perhaps hear additional evidence after the jury retires if necessary for resolution of the non-jury issues;
- (4) that regarding plaintiff's reply to the affirmative defenses of the defendants United States of America and Philip J. Sullivan, filed March 22, 1982, this reply, although unnecessary, shall be treated as an amendment to the complaint charging defendant Sullivan with Bivens liability.

App. "I" Continued

This the 28th day of March, 1983.

United States District Judge

CLERK'S COURT MINUTES

United States District Court  
FOR THE

NORTHERN DISTRICT OF ALABAMA  
SOUTHERN DIVISION

WILLIE J. DUNN,

CASE NUMBER:

VS.

Plaintiff,

CV 82-P-1488-S

UNITED STATES OF AMERICA;  
and PHILLIP J. SULLIVAN,  
Defendants.

This action came on for trial on September 15, 1983, before the Court, Honorable Sam C. Pointer, Jr., United States District Judge, presiding, and upon the conclusion of plaintiff's testimony, a Rule 41(b) motion of defendants for dismissal having been granted,

It is ORDERED and ADJUDGED that pursuant to the findings of facts and conclusions of law dictated into the record by the Court, judgment is entered in favor of the defendants; and this case is dismissed with prejudice. Costs are taxed against the plaintiff.

DATED: September 15, 1983

Birmingham, Alabama

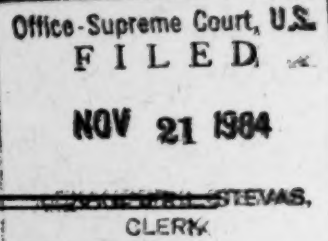
Court Reporter: Mayra B. Malone

JAMES E. VANDEGRIFT, CLERK

BY:

DEPUTY CLERK

(2)  
No. 84-707



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**In the Supreme Court of the United States**

OCTOBER TERM, 1984

---

**WILLIE J. DUNN, PETITIONER**

**v.**

**UNITED STATES OF AMERICA**

---

**ON PETITION FOR A WRIT OF CERTIORARI TO  
THE UNITED STATES COURT OF APPEALS FOR  
THE ELEVENTH CIRCUIT**

---

**MEMORANDUM FOR THE UNITED STATES  
IN OPPOSITION**

---

**REX E. LEE**  
*Solicitor General*  
*Department of Justice*  
*Washington, D.C. 20530*  
*(202) 633-2217*

# **In the Supreme Court of the United States**

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No. 84-707

WILLIE J. DUNN, PETITIONER

v.

UNITED STATES OF AMERICA

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*ON PETITION FOR A WRIT OF CERTIORARI TO  
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## **MEMORANDUM FOR THE UNITED STATES IN OPPOSITION**

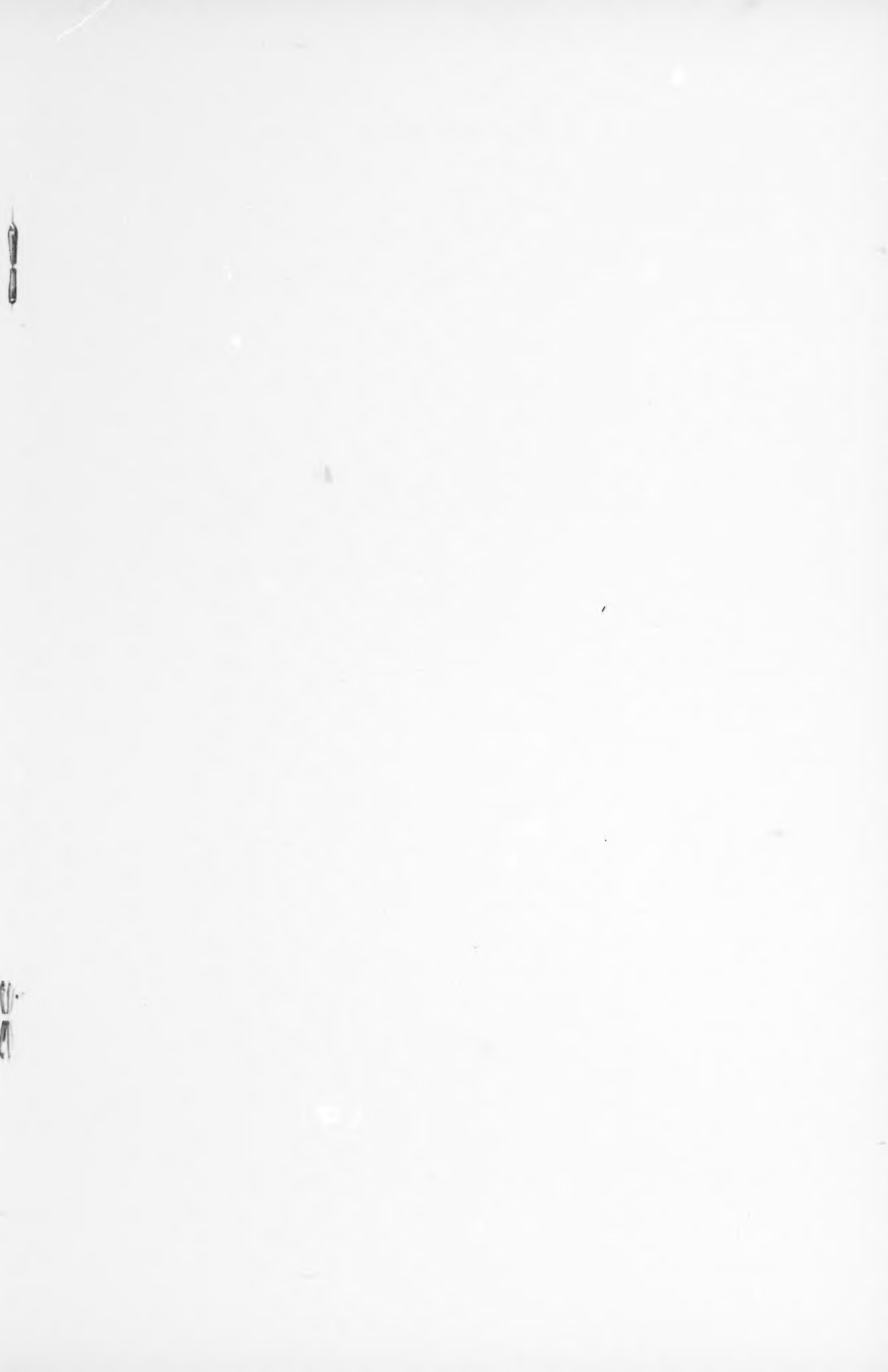
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The court of appeals in this civil income tax case dismissed petitioner's appeal for lack of jurisdiction on July 3, 1984 (Pet. App. A). Petitioner did not obtain an extension of time within which to file a petition for a writ of certiorari. The time for filing a petition accordingly expired on October 1, 1984, a Monday. 28 U.S.C. 2101(c). The petition was not filed until October 2, 1984. The petition, which was filed pro se, was not accompanied by a notarized statement by a member of the Bar of this Court stating that the mailing took place on a particular date within the permitted time. See this Court's Rule 28.2. The time limit provided by

Section 2101(c) is jurisdictional. *Department of Banking v. Pink*, 317 U.S. 264 (1942). It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

REX E. LEE  
*Solicitor General*

NOVEMBER 1984



WILLIE J. DUNN  
NOV 30 1984

No. 84-707

(4)

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1984

WILLIE J. DUNN,

Petitioner

vs.

UNITED STATES OF AMERICA and  
PHILIP J. SULLIVAN

Respondent

ON PETITION FOR A WIT OF CERTIORARI TO  
THE UNITED STATES COURT OF APPEALS FOR  
THE ELEVENTH CIRCUIT

\_\_\_\_\_  
PETITIONER'S MOTION

\_\_\_\_\_  
WILLIE J. DUNN  
PETITIONER  
PRO SE  
4028 JUANITA CIRCLE  
ROOSEVELT CITY, ALABAMA 35020  
(205) 424-1776

9 pp

In the Supreme Court of the United States

October Term, 1984

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No. 84-707

---

Willie J. Dunn,

Petitioner

vs.

United States of America and  
Philip J. Sullivan,

Respondent

---

ON Petition For A Writ of Certiorari to  
The United States Court of Appeals For  
The Eleventh Circuit

---

Motion for Leave of Court to Secure and file Therewith,  
A Notarized Statement From A Member of The Bar Of This  
Court, Attesting To The Date On Which Petitioner  
Deposited His Petition With The U. S. Post Office,  
Pursuant to Rule 28.2 of This Court, Or In The Alter-  
native, To Request That This Court Waive Such  
Requirement

28

Comes now the petitioner and respectfully moves this Court for leave to supplement his pleading so that it may comply with the provisions of Rule 28.2 of this Court. In support thereof, petitioner says:

1. Respondent's Brief in Opposition avers that the petitioner failed to fully comply with Rule 28.2 to the extent that he did not file with his Petition, a notarized statement from a member of the bar of this Court, attesting to the date on which he mailed his Petition.
2. Petitioner respectfully says to this Court that he did not know such a statement was required. He did call the Clerk's Office and was told that as long as his Petition was placed with the U. S. Postal Office on October 1, 1984, it would be timely. Exhibit A shows that the Petition was mailed on October 1, 1984. Petitioner's telephone bill shows that he did call the Clerk's Office on September 25, 1984 to secure information as to when his Petition would be timely filed.



Exhibit B. 3. As can be seen, the petitioner made a "good faith" effort to comply with this Court's Rule. Therefore, in order to rectify this error, the petitioner will need leave of Court such that he may solicit a notarized statement from a member of the bar of this Court, attesting to the date on which he mailed his Petition.

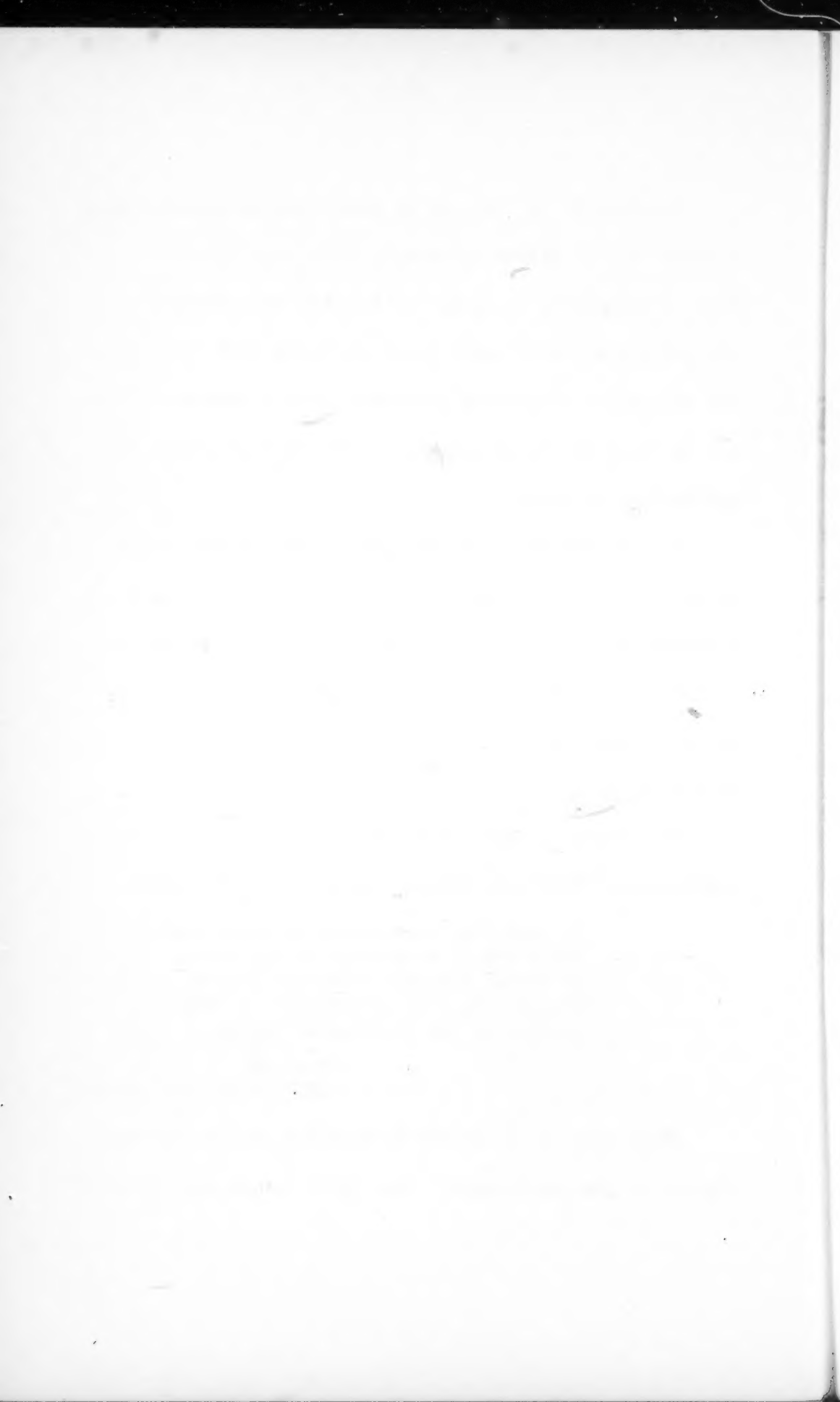
4. In the alternative, petitioner respectfully moves this Court to waive the requirement of having a member of the bar to give he a notarized statement attesting to the date on which he mailed his petition, as petitioner made a "good faith" effort to comply with Rule 28.

5. Finally, The Solicitor General, Mr. Rex Lee, speaking on "Face the Nation" recently stated that:

It would be irresponsible government not to call attention to the court of those changes in public policy [regarding the] protection of the rights of the individual person.


Rex Lee  
CBS' "Face the Nation"

This suit is about the protection of fundamental rights of the petitioner: the right to worship free of



harassment; the right to travel free of surveillance and harassment; the right to attend professional meetings free of harassment and surveillance; and the right not to suffer personal injury or to have personal property damaged by IRS agents.

Wherefore, petitioner prays that this Court will grant he leave to rectify the defect found in his pleading, thereby fully complying with Rule 28.2 of this Court; or, in the alternative, to waive such requirement on the grounds that petitioner made a "good faith" effort to comply with this Court's Rule 28, and to deny he his Petition would result in an injustice.

  
\_\_\_\_\_  
Willie J. Dunn, Petitioner  
Pro Se  
4028 Juanita Circle  
Roosevelt City, Alabama 35020  
(205) 424-1776

2

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N

B  
K  
N

LE

Petitioner's Exhibit "A"

South Central Bell

South Central Bell

AT&T COMMUNICATIONS \*\*

205 424-1776

329

OCT 17, 1984

R

ITEMIZED CALLS

BESM PAGE

2 ATX

DATE	TIME	PLACE	AREA	NUMBER	*	MIN	AMOUNT	T
SEP 25	730AM	TO WASHINGTON DC	202	252-3000	N	1	.23	A
SEP 25	804AM	TO WASHINGTON DC	202	252-3000	D	3	1.38	A
SEP 25	1235PM	TO WASHINGTON DC	202	252-3000	D	1	.58	A
SEP 26	1207AM	TO OAKLAND CA	415	569-1974	N	11	2.11	A
OCT 11	1259AM	TO OAKLAND CA	415	569-1974	N	5	1.01	A
OCT 13	1014AM	TO CLEVELAND OH	216	421-1292	N	26	4.23	A
OCT 14	310PM	TO CLEVELAND OH	216	561-0779	N	18	2.95	A

TOTAL CHARGE FOR ITEMIZED CALLS

12.49

TOTAL TAX: FED .37 STA .00 LOC .00

CALLING INQUIRIES - CALL 327-1700

Y \*-RATE APPLIED

-NITE/WKND

CONTINUED

PLEASE RETURN ENCLOSED CARD WITH YOUR PAYMENT. PAY BY MAIL.



Petitioner's Exhibit "B"

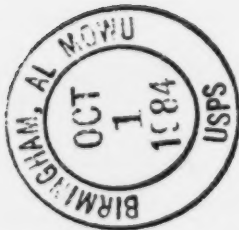
U. S. Postal Receipt

110	14.55	PMTR
110	3.42	PMTR
110	2.56	PMTR
110	1.39	PMTR

10	1	1984	DATE
\$		21.92	TOTAL

\$	21.92	RECT
\$	0.00	C H

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**BEST AVAILABLE COPY**



No. 84-707

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IN THE SUPREME COURT OF THE UNITED  
STATES

---

Willie J. Dunn,

Petitioner

vs.

United States of America and  
Philip J. Sullivan,

Respondents.

---

On Petition for A Writ of Certiorari To  
The United States Court of Appeals For the  
Eleventh Circuit

---

Certificate of Service

This is to certify that the parties listed below  
have been served with petitioner's Motion, by deposit-  
ing the same in the mail with proper postage, on

November 28, 1984, and addressed to:

Mr. Arrin K. Ames, Attorney for Room 304N, Birmingham,  
Alabama 35243, and Mr. Rex Lee, Solicitor General,  
Department of Justice, Washington, D.C.



  
Willie J. Dunn, Petitioner

Pro Se

4028 Juanita Circle

Roosevelt City, Alabama 35020

(205) 424-1776

1-4  
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DEC 17 1984

No. 84-707

Supreme Court, U.S.  
FILED

DEC 17 1984

ALEXANDER L. STEVAS  
CLERK

IN THE SUPREME COURT OF THE

UNITED STATES

October Term, 1984

WILLIE J. DUNN,

Petitioner,

vs.

UNITED STATES OF AMERICA and  
PHILIP J. SULLIVAN,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED  
STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

Reply Brief

WILLIE J. DUNN  
PETITIONER  
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(205) 424-1776

**BEST AVAILABLE COPY**

In the Supreme Court of the United States

October Term, 1984

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No. 84-707

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Willie J. Dunn,

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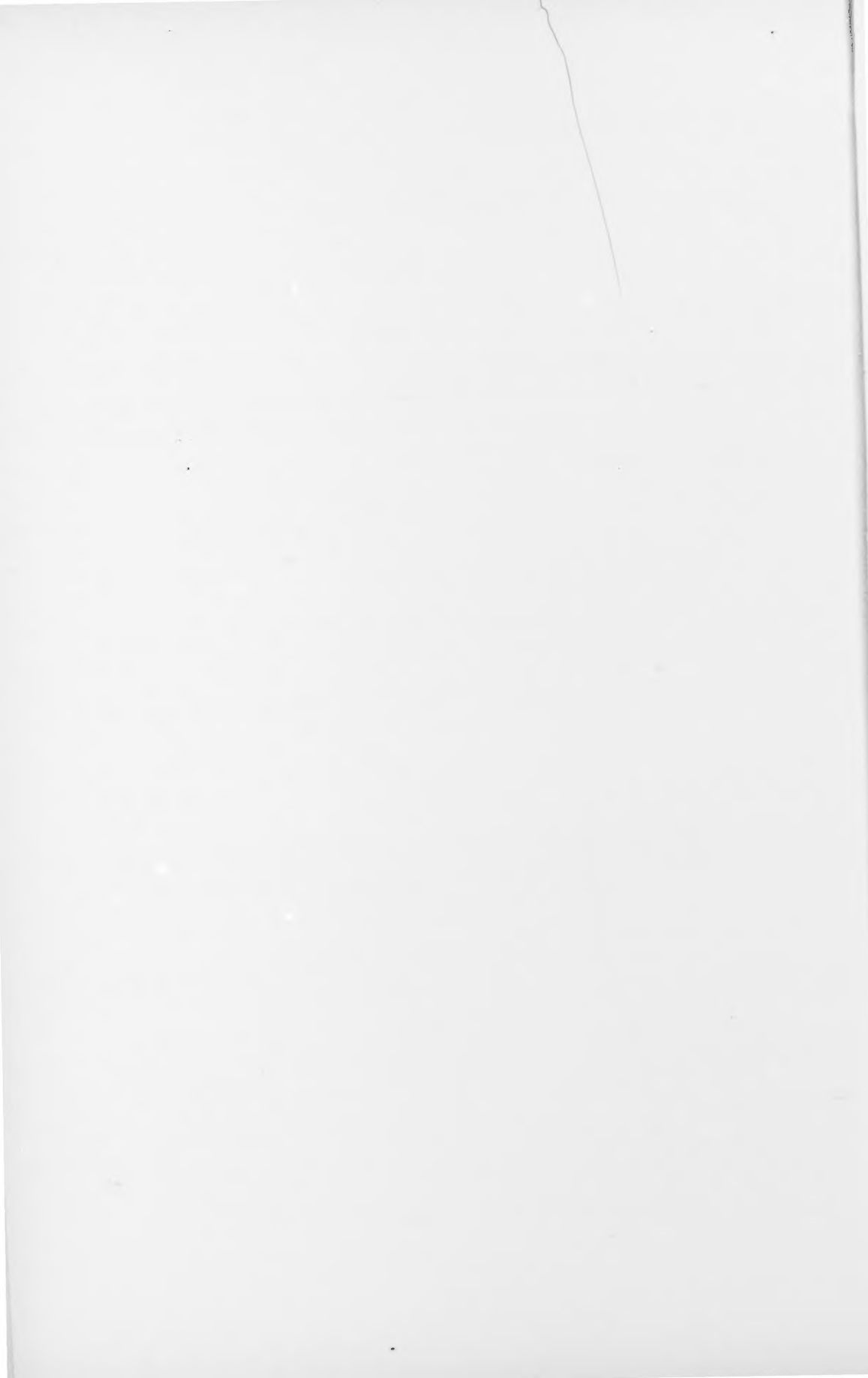
Respondents.

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On Petition For A Writ of Certiorari to  
The United States Courts of Appeals for  
The Eleventh Circuit

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Reply Brief



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## Petitioner's Reply

The Solicitor General's Memorandum for the United States in Opposition was filed with this Court on November 20, 1984. It alleged that the Petition was untimely filed, pursuant to this Court's Rule 28.2, thereby failing to meet the mandatory jurisdiction requirement, concluding that the writ for certiorari shall be denied because petitioner failed to include with his brief, a notarized statement from a member of the bar of this Court. Petitioner respectfully denies this, and avers:

First, that the petitioner could not have more fully complied with this Court's Rule 28.2, since he is pro se. Petitioner is not a member of the bar of this court. The plain truth is petitioner could not have misrepresented himself before this Court by filing such a notarized statement. Rule 28.2 states:

Rule 28.2. To be timely filed, a document must be received within the time specified for filing, except that any



document shall be deemed timely filed if it has been deposited in a United States post office or mailbox, with first-class postage prepaid, and properly addressed to the Clerk of this Court, within the time allowed for filing...(Underlined for emphasis)

Exhibit B, of petitioner's Motion (Reproduced as Appendix A for the convenience of the Court) clearly shows that the Petition was placed in the U.S. Mail, with First-Class postage, as required by Rule 28.2, on October 1, 1984. Petitioner followed the advice of an Assistant Clerk, who informed him that as long as his Petition was placed in the mail on October 1, 1984, it would be timely filed. The substantive affect of the Solicitor General's Memorandum is that it would manipulate jurisdiction in an effort to deny recognition and judicial enforcement of constitutional rights. This would be against the Constitution, as Article III mandates that:

Section 1. The judicial power of the United States, shall be vested in one supreme court...(See Appendix)



Section 2. The judicial power shall extend to all cases, in Law and Equity, arising under this Constitution, the Laws of the United States...to Controversies to which the United States shall be a Party...between citizens of different states...

In all cases affecting Ambassadors, other public Ministers and Consuls, and those in which a state shall be a Party, the supreme court shall have original Jurisdiction. In all other cases before mentioned, the supreme court shall have appellate Jurisdiction both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

From this document, it is clear that Article III contains a grant of appellant jurisdiction to this Court. See Kline v. Burke Constr. Co., 260 U.S. 226, 234(1922); Stevenson v. Fain, 195 U.S. 165, 167 (1904); The "Francis Wright," 105 U.S. 381, 385-386 (1881). The Constitution explicitly authorizes "exceptions" to this Court's appellate jurisdiction. See Martin v. Hunter's Lessee, 14 U.S. (1 Wheat.) 304, 332 (1816) (distinguishing between appellate and original jurisdiction). Beginning with



the Judiciary Act of 1789, Congress has assumed the statutory voice of affirmatively granting this Court jurisdiction. Where the Congress has omitted the grant of jurisdiction, this Court has constructed that omission as subtraction from Article III jurisdiction. See, Durourreau v. United States, 10 U.S. (6(ranch) 307, 314 (1810)). Here, Chief Justice Marshall stated that:

When the first legislature of the union proceeded to carry the third article of the constitution into effect, they must be understood as intending to execute the power they possessed of making exceptions in express terms. They have not declared that the appellate power of the court shall not extend to certain cases; but they have described affirmatively its jurisdiction, and this affirmative description has been understood to imply a negative on the exercise of such appellate power as is not comprehended within it.

In Crowell v. Benson, 285 U.S. 22, 60 (1932), this Court stated that:

...in cases brought to enforce constitutional rights, the judicial power of the United States necessarily extends to the independent determination of all questions, both of fact and law, necessary to the performance of that supreme function.



It is the constitutionality of rights, infringed upon and deprived thereof by agents of the Internal Revenue Services, that jurisdiction is conferred upon this Court. Hence, the above quota of the Supreme Court suggests and indeed implies, that a federal judicial forum is available to hear the petitioner's claims of violations of constitutionally protected rights, as alleged in the Complaint.

The Complaint alleges that agents of the Internal Revenue Service, using vehicles owned and operated by South Central Bell Telephone Company, a public utility, incorporated in the state of Delaware, and whose principle offices are located in Birmingham, Alabama, surveilled and harassed petitioner over a period of seven (7) years, to wit: (1) opened his First-Class mail; (2) interviewed he by posing as employees of the Psychological Corporation and the First National Bank of Birmingham; (3) harassed he at his church, during worship hour; (4) aimed an electronic listening device at he and his



sister; (5) planted electronic listening devices in his automobiles; (6) planted an electronic listening device in his home; (7) called petitioner at his office and told him what he said in his bedroom, to his wife; (8) damaged petitioner's automobile on at least three(3) occasions; (9) planned and executed a scheme which resulted in petitioner wrecking his car in Sylacauga, Alabama; (10) caused he to be injured; (11) called he a "smut;" (12) surveilled and harassed he while attending a professional meeting and associating with colleagues; (13) harassed he while travelling the intra/interstate highways; and (14) infringed upon those liberties petitioner reasonably expected to be secure. The gist-essence of petitioner's claims are that his constitutional rights have been infringed upon and that he has been deprived of constitutionally protected liberties by governmental officials and employees of a state regulated utility company. When Government agents and a utility company's employees, working in unison to infringe



upon recognized rights and simultaneously deprive petitioner of constitutionally protected rights, Congress conferred jurisdiction upon this Court, by which petitioner's claims could be fairly and independently adjudicated. See St. Joseph Stock Yards Co. v. United States, 298 U.S. 38, 84 (1936), (Justice J. Brandeis concurring) ("independent judgment upon the facts" as well as the law is necessary. 298 U.S. at 51-52).

Question raised: Whether it was Congress intent to have petitioner, who invoked the protection of the First, Fourth, and Fifth Amendments, to have to first seek relief in a state court against a public utility, which is regulated by a state regulatory agency, for the protection of constitutionally protected rights?

Justice Brandeis (dissenting opinion) in Crowell v. Benson, 285 U.S. at 87 stated, relative to the question raised, that:

The supremacy of law demands that there shall be opportunity to have some court decide whether an erroneous rule of law was applied....To that extent, the person exerting a right, whatever its source, should be extended to the independent judgment of a court on the ultimate question of constitutionality.



The petitioner avers that the Constitution confers jurisdiction upon this Court vis-à-vis the subject-matter and the specific sets of controversies. The arguments comes down to this: If Congress were to place an unconstitutional limitation upon this Court's jurisdiction, the Court would strike it down, and proceed under its grants of constitutional jurisdiction. Thus, jurisdictional limitations would have to be measured against the Constitution. Here, Alexander Hamilton, writing on the judicial meaning of the Constitution, stated that:

A constitution is, in fact, and must be regarded by the judges as, a fundamental law. It therefore belongs to them to ascertain its meaning as well as the meaning of any particular act proceeding from the legislative body. If there should happen to be an irreconcilable variance between the two, that which has the superior obligation and validity ought, of course, to be preferred; or in other words, the Constitution ought to be preferred to the statute, the intention of the people to the intention of their agents.

The Federalist Papers,  
No. 78.



The First Amendment guarantees petitioner the right to religious freedom, the right to petition the Government, the right to attend professional meetings, and the right to associate with colleagues, free of harassment and surveillance by South Central Bell Telephone Company and agents of the Internal Revenue Service. The interference of First Amendment rights have clearly been shown to have occurred as a result of South Central Bell Telephone Company and agents of the Internal Revenue Service, actions. The practice of religious freedom, the right to petition the Government, the right to attend professional meetings and associate with colleagues are so rooted in traditions and the consciousness of the American people, that these guarantees are considered to be fundamental rights. See Lynch v. Donnelly, 104 S.Ct. 1355; Hishon v. King & Spalding, 104 S.Ct. 2229; Schall v. Martin, 104 S.Ct. 2403.

The Fourth Amendment guarantees petitioner "the right to be let alone" (See Brandeis and Warren in 4 Harv. L. Rev. 193, (1890) and

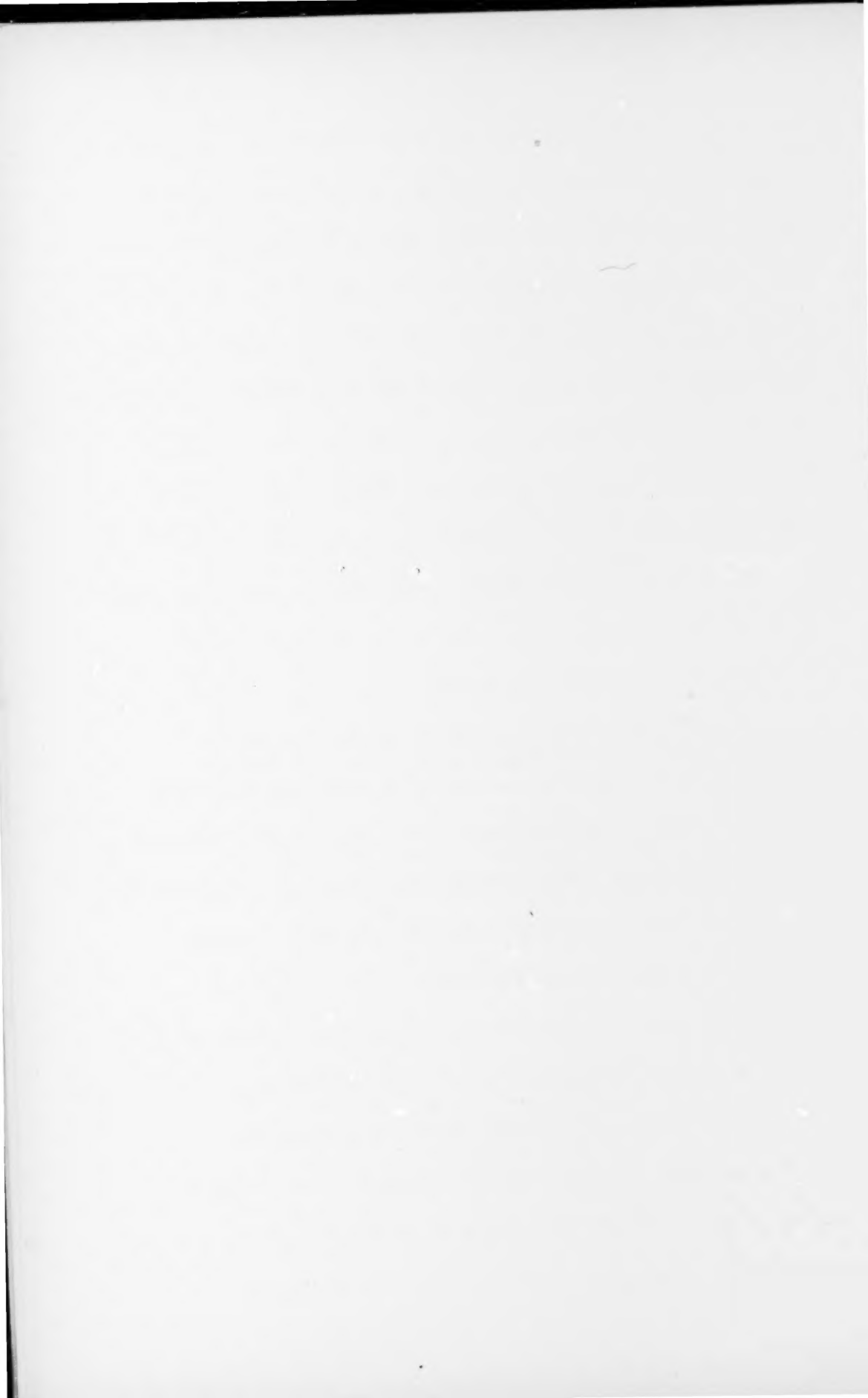


the right to be secure in his "persons, houses, papers and effects," against electronic surveillance of petitioner. See, Katz v. United States, 389 U.S. 347, 19 L.Ed. 2d 576, 88 S.Ct. 507; Rhodes v. Graham, 37 S.W. 2d 46 (Ky. 1931); Hamberger v. Eastman, 206 A.2d 239 (N.H. 1964), and against damages to his personal property. See Pierson v. Ray, 386 U.S. 547; 18 L.Ed. 2d 288; 87 S. Ct. 1213.

Mr. Justice Brandeis, dissenting in Olmstead v. United States, 277 U.S. 438; 48 S.Ct. 564; 72 L.Ed. 944 (1928) stated:

Experience should teach us to be most on our guard to protect liberty when the government's purposes are beneficent.

The Due Process Clause of the Fifth Amendment guarantees petitioner the right to travel intra and interstate highways, free of surveillance and harassment by South Central Bell Telephone and agents of the Internal Revenue Service. The affidavits of the petitioner (R-III-587-620, 637-648) show "good cause" for this action. Therefore, jurisdiction arises under the laws of the United States. See Heckler v. Renger, 104 S. Ct. 2013; Iron



Harrow Honor Society v. Heckler, 104 S.Ct. 373.

These are compelling arguments which favor the survival of jurisdiction of the Petition.

In fact, it is a dire effort to save appellant's remedy. See Phillips v. United States, 312 U.S. 246; 61 S.Ct. 480; 85 L.Ed.800; Gonzalez v. Automatic Employees Credit Union, 419 U.S. 90; 95 S.Ct. 289, 42 L.Ed. 2d 249.

Coupled with the canons of Alexander Hamilton, Article III, Section 2 of the Constitution, and this Court's in Durousseau v. United States, 10 U.S. (6Cranch) at 314, petitioner finds absolutely no clear indication that this Court lacks jurisdiction, therefore, absent of any such indication, petitioner respectfully avers that Congress intended for this Court to have jurisdiction over the subject-matter, with regard to deciding the constitutionality of acts perpetrated against petitioner by federal Government entities and publicly owned utility.



Secondly, the view that Article III, Section 2, limits the jurisdiction of this Court to cases arising under the Constitution, vis-à-vis "appellate Jurisdiction, both as to Law and Fact," has particular import for this case, by virtue of its subject-matter. Thus, the petitioner's jurisdictional arguments are that: (1) this case arises under the laws of the United States; (2) it meets the controversy requirements (See Consolidation Rail Corp. v. Darrone, 104 S.Ct. 1248); (3) the Complaint sought injunctive relief; (4) there are remedies (both constitutional and statutory provisions) for wrongful acts perpetrated against the petitioner (See South Carolina v. Regan, 104 S.Ct. 1107). These are the bases upon which petitioner avers that this Court has jurisdiction.

In Daniels v. Railroad Co., 70 U.S. (3 Wall.) 250, 254 (1866), the Supreme Court stated that:



...it is for Congress to determine how far, within the limits of the capacity of this court to take, appellate jurisdiction shall be given, and when conferred, it can be exercised only to the extent and in the manner prescribed by law.

Given the premise that Congress has conferred jurisdiction upon this Court by virtue of the subject-matter of this case; the Judiciary Act of September 24, 1789; and Article III, Section 2 of the Constitution, petitioner avers that it was not Congress' intent to relatively remove federal jurisdiction to achieve unconstitutional substantive ends; namely, to deny petitioner his constitutional rights.

Finally, petitioner respectfully says that he recognizes the importance of mandatory jurisdiction, but avers that this Court's discretionary jurisdiction would be more applicable, (See MTM, Inc, v. Baxley, 420 U.S. 799 (1975) as this case raises several questions at constitutional law, to wit:

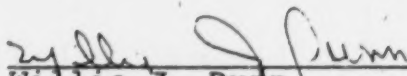


1. Whether the First Amendment gives petitioner the right to petition the Government such that he had a constitutional right to worship free of being harassed during worship hours by two(2) Internal Revenue Service agents?
2. Whether the Fourth Amendment protects petitioner from illegal electronic surveillance, by agents of the Internal Revenue Service, at his home and in his cars?
3. Whether under Jackson v. Metropolitan Edison Co., 419 U.S. 345; 42L.Ed.2d 447; 95 S.Ct. 449, petitioner, who invoked the protection of the First, Fourth, and Fifth Amendments, must first seek relief in a state court against a public utility company?
4. Whether under the doctrine of respondent superior, Philip J. Sullivan, the District Director of Internal Revenue Service, Birmingham, Alabama, may not be held liable for the acts of his agents who infringed upon and deprived petitioner of constitutional rights, damaged his personal property, and caused him personal injuries, under Butz v. Economou, 438 U.S. 478, 98 S. Ct. 2894; 57 L.Ed. 2d 895(1978)?
5. Whether it was congressional intent to preclude the judicial allowance of a remedy for conduct of IRS agents manifestly beyond their authority?
6. Whether petitioner has no claims for money damages against the United States?



These are substantial constitutional questions. See Goosley v. Osser, 409 U.S. 513; 93 S.Ct. 854; L.Ed. 2d36. And the Complaint formed a basis for equitable relief. See Idlewild Bon Voyage Liquor Corp. v. Epstein, 370 U.S. 713; 82 S.Ct. 1294; 8L.Ed. 2d 794.

In conclusion, petitioner avers that this Court should grant he his writ of certiorari for the reasons cited. It would be unjust to deny petitioner remedy, as Congress, in its enactment of Article III, Section 2 meant to leave intact, some judicial forum capable of providing constitutionally adequate remedies for constitutional wrongs. Otherwise, petitioner will be left without adequate remedy. See, Moragne v. States Marines Lines, Inc. 398 U.S. 375, 393; 26 L.Ed.2d339; 90 S.Ct. 1772.

  
\_\_\_\_\_  
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No. 85-707

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IN THE SUPREME COURT OF THE  
UNITED STATES

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Willie J. Dunn,

Petitioner,

vs.

United States of America and  
Philip J. Sullivan,

Respondents.

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ON PETITION FOR A WRIT OF CERTIORARI  
TO THE UNITED STATES COURT OF  
APPEALS FOR THE ELEVENTH CIRCUIT

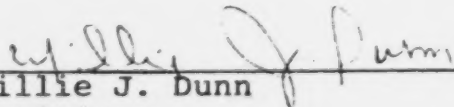
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CERTIFICATE OF SERVICE

This is to certify that the parties listed below have been served with petitioner's Reply, by depositing the same in the U.S. Mail, with First-Class postage prepaid on December  
14, 1984, and addressed to: Mr.  
Arrin K. Ames, Attorney for South Central Bell



Telephone Company, 3196 Highway 280-S, Room  
304N, Birmingham, Alabama 35243, and Mr. Rex  
Lee, Solicitor General, Department of Justice,  
Washington, D.C. 20530.

  
\_\_\_\_\_  
Willie J. Dunn  
Petitioner  
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APPENDIX

A - U.S. Postal Receipt

110	14.55	PMTR
110	3.42	PMTR
110	2.56	PMTR
110	1.39	PMTR

10	1	1964	DATE
\$	21.92	TOTAL	

21.92	RECT
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B - Article III, Section I

Article III reads in part:

SECTION 1. The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services a Compensation, which shall not be diminished during their Continuance in Office.



C - Article III, Section 2

SECTION 2. The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority; - to all Cases of admiralty and maritime Jurisdiction; - to Controversies to which the United States shall be a Party; - to Controversies between two or more States; - between a State and Citizens of another State; - between Citizens of different States; - between Citizens of the same State claiming Lands under the Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be a Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.